

REDUNDANCY AND RESTRUCTURING DONE RIGHT

Getting redundancy procedure wrong can cost financially and damage your reputation. If you are facing a business or workplace closure, or need fewer employees to carry out particular work, Matt McBride, Fiona Powell and Charlotte Rees-John from Freeths Employment team tell you what you need to know, whatever the scale of your redundancies or restructuring.

Individual consultation, collective consultation or both?

If any staff are at risk of redundancy, you must consult individuals. If 20 or more employees of an establishment face redundancy within a 90-day period, you are obliged to carry out collective consultation as well.

Tips for individual consultation

1. **Consult early, consult everyone** – Consultation should happen at a stage where employee feedback could make a difference. Employees who are not in work during the consultation process (long-term sick, family or other leave) must be included.
2. **Consider comments on your pool and selection criteria** – Avoid challenge in a tribunal by listening to staff feedback on the pool of employees selected as at risk and the selection criteria for redundancy and then making your decisions.
3. **Apply reasonable thought to selection criteria** – Your criteria should be objective and checkable. Last in, first out and attendance are objective but discriminatory and disciplinary record is unlikely to give you the numbers. An objective interview process alongside prior performance might suit. The rule is to apply reasonable thought.
4. **Avoid compulsory redundancy** – Compulsory redundancies are your biggest risk and the law aims to avoid them. Instead:
 - Look at mobility and flexibility clauses at the beginning of the process, if you have them, and exercise these reasonably.
 - Ask for volunteers; it's good practice with no obligation.
 - Explore alternative roles. If your enterprise is part of a wider group, you may have a duty to look for alternative jobs within that group. These must be suitable, including in status. Staff on family leave (maternity, shared parental, adoption) selected for redundancy have a right to be offered any suitable alternative employment.
5. **Include an appeal process** – Although there is no legal right to appeal in a redundancy dismissal situation, allowing an appeal shows the overall fairness of your process.

Advice for collective consultation (20 or more redundancies) – does it apply to you?

Where there is a proposal to dismiss as redundant 20 or more employees of an establishment within a 90-day period, the Trade Union Labour Relations Act demands that you consult collectively as well as

individually. Include voluntary redundancies, fixed-term contracts ending early, homeworkers and staff you find suitable alternative roles for in your count. If your business has several branches, each may be a separate establishment, or not. If you aren't sure, seek advice.

- 1. Involve employee representatives** – This can be a recognised trade union or elected representatives. Allow time for employees to elect representatives if needed.
- 2. Work out your timeline** – For 20 to 99 redundancies, consultation must begin at least 30 days before the first note of dismissal. For 100 or more redundancies, it must start at least 45 days before. Consultation begins when you inform employee representatives and can take longer so allow buffers. The aim of consultation is to reach an agreement with the representatives on avoiding, mitigating the effect of, and reducing the number of dismissals. Not following the collective consultation procedure can earn penalties of up to 90 days' pay per employee.
- 3. Fulfil your statutory duties** – You must notify the Secretary of State for Business, Energy & Industrial Strategy of your intention to make 20 or more redundancies by submitting an HR1 form at least 30 days before the first dismissal for fewer than 100 redundancies and at least 45 days for 100 redundancies or more. It is a criminal offence not to and may attract unlimited fines. Issue notes of dismissal after proper consultation with employee representatives and submitting form HR1.
- 4. Protect your reputation** – Follow the procedure to avoid claims and defend any that are brought. Getting redundancy procedure wrong is likely to hit the headlines and hurt.

For advice on redundancy and restructuring contact the Freeths Employment team. **Matt McBride**, 0345 274 6949, matthew.mcbride@freeths.co.uk, **Charlotte Rees-John**, 0345 404 1749, charlotte.rees-john@freeths.co.uk, **Fiona Powell**, 0345 272 5719, fiona.powell@freeths.co.uk

Article published here <https://www.thehrdirector.com/features/employment-law/redundancy-restructuring-right-way/>